THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :01.05.2007

WP(C) No.3171/2007

DESH RAJ SHARMA ...Petitioner

- versus -

ELECTION COMMISSION OF INDIA ...Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Bankim K. Kulshreshta with Mr Shivanand
For the Respondent/ECI : Mr Sunil Goel

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J (ORAL)

+ **CM NO. 5977/2007 in WP (C) 3171/2007**
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Allowed subject to all just exceptions.

WP (C) 3171/2007

1. By way of this writ petition the petitioner (Desh Raj Sharma), claiming himself to be the President of Himachal Vikas Congress as also Himachal Vikas Party, is seeking a direction to be issued to the Election Commission of India to grant temporary permission for contesting the forthcoming municipal election and the bye-election from the Hamirpur Parliamentary Constituency under the banner of Himachal Vikas Party and with

the symbol of mobile phone. It is alleged by the petitioner that the nomination process for the forthcoming elections would commence on 02.05.2007.

2. It may be pointed out that a Letters Patent Appeal being LPA No. 157/2006 filed by this very petitioner is pending before a Division Bench of this Court. The question there is with regard to the recognition of Himachal Vikas Congress. The Election Commission by its order dated 31.03.2005 had accepted the merger of Himachal Vikas Congress with Indian National Congress and the name of Himachal Vikas Congress had been struck off from the list of political parties maintained by the Commission. It is alleged by the petitioner that the said merger was wrongful and that Mr Sukhram, who was the President at that point of time of the said Himachal Vikas Congress, did not have the authority to bring about the merger with the Indian National Congress. The learned Single Judge, before whom the writ petition was filed, dismissed the same. The petitioner, being aggrieved, had filed the aforesaid LPA, which is pending before the Division Bench. It is also necessary to note that an interim application had been filed in the said LPA and that was disposed of by an order dated 04.12.2006 passed by the Division Bench. The prayer in that application was for an interim direction to the Election Commission allowing the appellant therein to use the election symbol of the political party "Himachal Vikas Congress". The Division Bench disposed of the said application on, *inter alia*, the following terms:-

"Having considered the pleadings of the parties in the writ petition, the impugned order was passed. The said order is under challenge in this appeal. In case we pass any interim order in favour of the appellant in terms of his prayer, the same will amount to allowing the appeal at this stage. Besides, prima facie it is proved that Himachal Vikas Congress merged with the Congress Party and therefore, no order could be passed allowing the appellant to use the symbol of Himachal Vikas Party at this stage. The said prayer can only be considered at the time of hearing of the appeal itself."

3. Thereafter, another application was filed by the petitioner in the said LPA No. 157/2006 seeking early hearing and disposal of the Letters Patent Appeal. The reasons for early hearing were the impending municipal elections and the bye-election for the Hamirpur Parliamentary Constituency. After considering the arguments advanced by the counsel for the parties, the Division Bench by an order dated 26.02.2007 disposed of the application in the following terms:-

"**CM No. 2904/2007**

This is an application for early hearing of the appeal filed by the appellant.

This matter came up for consideration before this Court on 04.12.2006, when CM No. 1452/2006 filed by the appellant was disposed of. Thereafter, the matter was listed on 05.02.2007.

On 05.02.2007, the matter was again directed to be listed on 23.07.2007 for hearing of the appeal.

We find no reason to prepone the said date as the said date was fixed in the presence of the petitioner who was present on that date."

In view of these circumstances, it would not be possible for this Court to pass any interim direction on this writ petition.

4. In any event, it will be seen that the petitioner had moved an application on 20.03.2007 before the Election Commission of India for granting permission to Himachal Vikas Congress to contest the election of the Municipal Corporation of Simla as also the bye-election for Hamirpur Parliamentary Constituency on another symbol on urgent basis. The other symbol that the petitioner had sought was that of a mobile phone. This application was made despite the fact that the Division Bench was seized of the matter and no interim order had been passed in favour of the petitioner. Anyhow, this application was considered by the Election Commission of India and disposed of by an order dated 26.04.2007. The application was rejected in the following manner:-

> "I am directed to refer to your application dated 20.03.2007 on the subject cited. In this regard, your attention is invited to the Commission's Order dated 31st March, 2005, whereby the merger of Himachal Vikas Congress with Indian National Congress has been accepted by the Commission and the name of the Himachal Vikas Congress has been struck off from the list of political parties maintained by the Commission. Since, the party has ceased to exist as a political party, the question of allotment of any symbol as requested in your application, does not raise."

5. Now, the petitioner has come up with another story and that is that instead of permitting the petitioner and his associates to contest the said elections under the name Himachal Vikas Congress, they be permitted to

contest the same under the party name of Himachal Vikas Party and be alloted the symbol of a mobile phone. For this purpose an application for registration of Himachal Vikas Party under Section 29-A of the Representation of the People Act, 1951 was made to the Election Commission on 27.04.2007, i.e, only three days prior to the filing of the present petition. A copy of the said application is annexure P-10 to the writ petition, which is at page 41 of the paper book. The application makes interesting reading. First of all, the symbol given at the top shows a telephone of an older type and beneath the symbol are the three letters HVC, which obviously do not denote Himachal Vikas Party. Secondly, the letter shows Himachal Vikas Party as a registered party when, admittedly, it is not. Thirdly, in paragraph 5 of the said application it is mentioned that the executive committee of Himachal Vikas Congress on 14.03.2007 had taken the decision to contest the forthcoming election under the name and style of Himachal Vikas Party. A copy of the resolution of 14.03.2007 has also been filed and is at page 40 of the paper book. The resolution nowhere mentions the name of Himachal Vikas Party nor is there any such decision to contest the forthcoming election with the name and style of Himachal Vikas Party.

6. The prayer contained in the application dated 27.04.2007 is that Himachal Vikas Party be registered as a new political party and be allotted the symbol of mobile phone and that under emergent circumstances temporary

orders may be passed by 29.04.2007 so that "the legitimate expectation of the people of Himachal Pradesh" could be fulfilled.

7. Without commenting any further on the application dated 27.04.2007 it is quite clear that the procedure for registration of political parties is set out in Section 29-A of the Representation of the People Act, 1951. First of all, the application has to be made in an appropriate format and giving the requisite particulars as indicated in Section 29-A (4). The application is required to be accompanied by a copy of the memorandum or rules and regulations of the association or body, as indicated in sub-section (5). It is thereafter that the Commission may call for such other particulars as it may deem fit from the association or body making such an application. Under sub-section (7) of Section 29-A, the Commission is required to consider all the particulars in its possession and other necessary and relevant factors and is required to give the representatives of the association or body a reasonable opportunity of being heard and only thereafter the Commission can decide either to register the association or body as a political party for the purposes of Part IV-A of the said Act or not so to register it. The Commission is thereafter required to communicate its decision. The proviso to sub-section (7) of Section 29-A clearly stipulates that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-

section (5). Sub-section (8) provides that the decision of the Commission shall be final. This stage has not yet been reached and, therefore, on this ground also this writ petition itself cannot be maintained because it is premature.

8. As regards allotment of symbols, the Election Symbol (Reservation and Allotment) Order, 1968 will be applicable. Symbols are allotted to political parties after they are registered and recognized. It is quite possible that a political party may be registered but may not be recognized in a particular State. Without recognition, no reserved symbol can be allotted to the political party. In such eventuality, when the party is not a recognized party in a particular State, the members of such party can contest the elections, provided they fulfill the other requirements, as independent candidates and they can opt for the free symbols only.

8. For all these reasons, this writ petition is not maintainable and is dismissed with costs of Rs.10,000/-.

BADAR DURREZ AHMED
(JUDGE)

May 01, 2007
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